



STAFF REPORT ACTION REQUIRED

Various Encroachments – 170 Lawlor Avenue

Date:	March 9, 2009
To:	Toronto and East York Community Council
From:	Manager, Right of Way Management, Transportation Services Toronto and East York District
Wards:	Beaches-East York - Ward 32
Reference Number:	Te09034te.row

SUMMARY

This staff report is about a matter which Community Council has delegated authority from City Council to make a final decision.

Transportation Services has assessed a request from the owners of 170 Lawlor Avenue to allow the maintenance of a wooden screen fence ranging in height from 1.2 m to 1.52 m surmounted on top of a 0.18 m stone landing within the public right of way fronting 170 Lawlor Avenue. In addition, there exists a stone retaining wall measuring 0.13 to 0.3 m in height, along with dry laid pavers forming a step situated 0.33 m back of the City sidewalk within the public right of way fronting 170 Lawlor Avenue.

Although the height of the fence exceeds the former City of Toronto Municipal Code Chapter 313, Streets and Sidewalks which requires fences to be constructed no more than 1.0 m in height for fences on the frontage of lots and notwithstanding the reduced setback of the retaining wall and step from the rear edge of the City sidewalk, they do not impact negatively on the public right of way. Transportation Services recommends approval of these encroachments.

The owners will be given an opportunity to make a deputation before Community Council.

RECOMMENDATIONS

Transportation Services recommends that Toronto and East York Community Council:

1. approve the maintenance of the wooden screen fence, stone retaining wall and step within the public right of way fronting 170 Lawlor Avenue, subject to the property owners entering into an encroachment agreement with the City of Toronto, agreeing to but not limited to the following:
 - a. indemnify the City from and against all actions, suits, claims or demands and from all loss, costs, damages and expenses that may result from such permission granted;
 - b. maintain the encroachments at their own expense in good repair and a condition satisfactory to the General Manager of Transportation Services and will not make any additions or modifications to the encroachment beyond what is allowed under the terms of the Agreement;
 - c. obtain approval for associated work on private property from Municipal Licensing and Standards;
 - d. remove the fence, retaining wall and step upon receiving 90 days written notice to do so; and
 - e. accept such additional conditions as the City Solicitor or the General Manager of Transportation Services may deem necessary in the interest of the City; and
2. direct Legal Services and/or the General Manager of Transportation Services to extend the Encroachment Agreement to the new owner, in the event of sale or transfer to the property abutting the encroachment, subject to the approval of the General Manager of Transportation Services.

Financial Impact

There is no financial impact to the City as a result of this report.

ISSUE BACKGROUND

The property owners of 170 Lawlor Avenue submitted an application requesting permission to maintain a wooden screen fence ranging from 1.2 m to 1.52 m in height surmounted on top of a 0.18 m high stone landing, encroaching approximately 0.38 m within the public right of way, set back 3.7 m from the rear edge of the City sidewalk.

Site inspection determined that a stone retaining wall measuring 0.13 m to 0.3 m in height; along with dry laid pavers forming a step set back 0.33 m from the rear edge of the City sidewalk also exist within the public right of way fronting 170 Lawlor Avenue.

A letter of appeal was submitted by the owners wherein they advised that the wooden screens will serve to support climbing plants that will be positioned immediately adjacent to the structure.

COMMENTS

Applicable regulation

The construction and maintenance of fences within the public right of way are governed under the criteria set out in former City of Toronto Code Chapter 313-33, which provides for fences to be constructed to a maximum height of 1.9 m on the flank of a property and up to 1.0 m in height in front of a property if they are neither hazardous nor unsightly in appearance. In addition, fences must be set back 0.46 m from the rear edge of the City sidewalk or a minimum of 2.1 m from the curb where no sidewalk is present.

There are similar provisions within the Municipal Code to allow for the construction of steps and retaining walls that encroach within the public right of way, provided that they meet certain criteria amongst which include that all installations provide a minimum clearance of 0.46 m from the rear edge of the City sidewalk.

Reasons for approval

Although the height of the fence exceeds the former City of Toronto Municipal Code requirements of 1.0 m for fences on the frontage of lots, and notwithstanding the reduced setback of the retaining wall and step, Transportation Services has determined that the encroachments do not impact negatively on the public right of way and can be permitted provided that the owners enter into an encroachment agreement with the City of Toronto.

Details of the encroachments are on file with Transportation Services.

Photos of the property are shown on Appendix 'A'.

CONTACT

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SIGNATURE

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ATTACHMENTS

Appendix 'A' – photos

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